APPENDIX A

NO. COA01-557

NORTH CAROLINA COURT OF APPEALS

Filed: 7 May 2002

IN THE MATTER OF: NICHOLAS R. ROBERTS and the BUNCOMBE COUNTY BOARD OF EDUCATION

Appeal by respondent from order entered 29 January 2001 by Judge C. Walter Allen in Buncombe County Superior Court. Heard in the Court of Appeals 20 February 2002.

TYSON, Judge.

The Buncombe County Board of Education ("respondent") appeals from an order reversing its decision to suspend Nicholas R. Roberts ("petitioner") from school for the remainder of the Fall 1996 semester.

I. Facts

On 11 October 1996, petitioner was a sophomore at A.C. Reynolds High School in Buncombe County, North Carolina. While in his first period English class, petitioner was preparing to play a board game. When petitioner asked the teacher if he could be paired with two particular classmates, another student, Chris Meeks ("Meeks") stated "Hey Nick! Juanita [Plemmons] wants to be your partner." Petitioner then walked up to the table where Juanita Plemmons ("Plemmons") was seated, pushed the lower part of his body into her face, grabbed his crotch, and told her "I'll be your partner anytime,

and put 'deeze nuts' in your mouth." Petitioner then walked away to play the board game at another table.

Plemmons did not hear petitioner's statement. Plemmons stated that because she was embarrassed upon seeing petitioner grab his crotch, she closed her eyes, put her head down, and covered her ears with her hands. Three students who were seated nearby, Meeks, Adam Lowe ("Lowe"), and John Hefner ("Hefner"), informed Plemmons of the statement made by petitioner. Later that afternoon, Plemmons reported the incident to Assistant Principal Richard Pierce ("Pierce") who conducted an investigation by taking the statements of several students. Meeks, Lowe, and Hefner all confirmed the incident as reported by Plemmons. Four other students stated that although they were seated near Plemmons, they neither saw nor heard petitioner make any offensive gestures or comments.

After obtaining the student's statements, Pierce called petitioner into his office and informed him of the complaint against him. When asked his version of the events, petitioner admitted that he walked over to the table where Plemmons was seated and said that he would like to be her partner, but petitioner denied making any offensive gestures or statements. Later, however, petitioner admitted grabbing his crotch and saying "deeze nuts," but he claimed that the gesture and statement was directed toward Meeks, who had previously insulted him. According to petitioner, "deeze nuts" was an expression commonly used by the students and was similar to "kiss my butt."

Following his investigation, Pierce brought the incident to the attention of Principal Ronald L. Dalton ("Dalton"). Dalton reviewed the statements and concluded that petitioner

violated Board Policy 461 regarding sexual harassment which provides in pertinent part:

> Sexual harassment of students is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:
>
> . . . .
>
> (3) The harassment has a purpose or effect of unreasonably interfering with an individual's academic performance or creating an intimidating, hostile, or offensive learning environment.

Dalton suspended petitioner for five days, with a recommendation to the Reynolds District Hearing Board ("Hearing Board") that he be suspended through the end of the school semester. Dalton notified petitioner's parents of this decision and recommendation by letter dated 11 October 1996.

A hearing was conducted before the Hearing Board on 14 October 1996. The Hearing Board adopted Dalton's recommendation, suspending petitioner for the duration of the 1996 Fall semester. The Superintendent for the Buncombe County School System approved the recommendation that petitioner be suspended for the remainder of the semester. Petitioner appealed the decision to respondent pursuant to N.C.G.S. § 115C-391(e). On 7 November 1996, respondent conducted a review hearing and made the following determination regarding petitioner's conduct:

> The Board of Education does not believe that [petitioner's] behavior was intended to be "sexual harassment," however, the Board feels that his actions and words were both vulgar and obscene, and had the

> effect of creating an intimidating and offensive learning environment.

Respondent issued a letter, dated 22 November 1996, to petitioner's mother upholding the suspension for the duration of the school semester.

Petitioner filed a petition for judicial review with the Buncombe County Superior Court on 20 December 1996, pursuant to N.C.G.S. §§ 115C-391(e), 150B-43, and 150B-45. The superior court entered a judgment reversing respondent's decision on 28 October 1997. Respondent appealed to this Court. In the prior opinion of this Court, filed 6 April 1999, we reversed the decision and remanded for the entry of an order setting forth the standard of review applied. The superior court, on remand, entered an amended order on 29 January 2001 reversing the decision of respondent. Respondent appeals.

II. Issues

The controlling issues raised on appeal are whether: (1) the superior court erred in concluding that Board Policy prohibiting an attorney's presence at the Hearing Board constitutes a denial of due process and (2) the superior court applied an incorrect remedy in reversing the decision.

III. Standard of Review

The decision of the local board of education in disciplining any student may be appealed to the superior court of the county where the local board made its decision in accordance with Article 4 of Chapter 150B of the General Statutes. N.C. Gen. Stat. § 115C-391(e) (1999). The standard of review on appeal from a decision of a local board of

education is set forth in N.C.G.S. § 150B-51(b) which provides that the court reviewing a final decision may:

> reverse or modify the agency's decision, or adopt the administrative law judge's decision if the substantial rights of the petitioners may have been prejudiced because the agency's findings, inferences, conclusions or decisions are: (1) In violation of constitutional provisions; (2) In excess of the statutory authority or jurisdiction of the agency; (3) Made upon unlawful procedure; (4) Affected by other error of law; (5) Unsupported by substantial evidence . . . in view of the entire record as submitted; or (6) Arbitrary, capricious, or an abuse of discretion.

N.C. Gen. Stat. § 150B-51(b) (2000).

The proper standard for the superior court's judicial review "depends upon the particular issues presented on appeal." *Amanini v. North Carolina Dep't of Human Resources*, 114 N.C. App. 668, 674, 443 S.E.2d 114, 118 (1994). When the petitioner contends that the decision of the agency, here the local school board, was unsupported by the evidence or was arbitrary or capricious, then the reviewing court must apply the "whole record" test. *In re McCrary*, 112 N.C. App. 161, 165, 435 S.E.2d 359, 363 (1993). "The 'whole record' test requires the reviewing court to examine all competent evidence (the 'whole record') in order to determine whether the agency decision is supported by 'substantial evidence.'" *Amanini*, 114 N.C. App. at 674, 443 S.E.2d at 118. "Substantial evidence is that which a reasonable mind would regard as adequately supporting a particular conclusion." *Walker v. North Carolina Dep't of Human Resources*, 100 N.C. App. 498, 503, 397 S.E.2d 350, 354 (1990) (citation omitted). When the petitioner argues that the decision of the agency

violates a constitutional provision, the reviewing court is required to conduct a *de novo* review. *In re Ramseur*, 120 N.C. App. 521, 526, 463 S.E.2d 254, 257 (1995).

As to appellate review of a superior court order regarding an agency decision, "the appellate court examines the trial court's order for error of law. The process has been described as a twofold task: (1) determining whether the trial court exercised the appropriate scope of review and, if appropriate, (2) deciding whether the court did so properly." *Amanini*, 114 N.C. App. at 675, 443 S.E.2d at 118-19 (citations omitted).

IV. Due Process

Here, petitioner alleged that respondent's decision is based on an error of law in that his state and federal constitutional rights of Due Process were violated when he was denied legal representation at the Hearing Board. When petitioner alleges that the agency's decision, here the local school board, is based on an error of law, the proper review is *de novo* review. *Ramseur*, 120 N.C. App. at 526, 463 S.E.2d at 257. "De novo review requires the court to "'consider a question anew, as if not considered or decided by the agency previously. . . ." and to "make its own findings of fact and conclusions of law . . ." rather than relying upon those made by the agency. *Jordan v. Civil Serv. Bd. of Charlotte*, 137 N.C. App. 575, 577, 528 S.E.2d 927, 929 (2000) (citation omitted).

The superior court's amended order states that its review was "of the whole record de novo." While "whole record" and *de novo* are separate tests to be applied upon differing issues, the superior court entered a finding of fact that pursuant to Board Policy 460 "Petitioner's attorney was denied access to the hearing room to advise and counsel the Petitioner

or his parents. A non-parent adult is permitted in the hearing room upon request of the Petitioner." The superior court reviewed Board Policy 460 which provides in pertinent part:

> Adult Representation in Addition to or in Lieu of Parents. If the parents cannot be present or if the student or his parents think his interests can be protected better by the presence of another adult in addition to the parents, the student may bring another adult to the hearing. If the parents are present, the non-parent adult may advise the student, but he may not examine witnesses, make any statement, or in any way actively represent the student before the board. . . . The non-parent adult may not be an attorney.

The superior court then concluded that "[t]he failure of the Reynolds District Hearing Board to allow the mere presence of the Petitioner's attorney as a non-parent adult and the provision of the Board Policy prohibiting an attorneys presence under any circumstance constitutes a denial of due process to the Petitioner . . . ." We conclude that the superior court utilized the correct standard of review. *See Sun Suites Holding v. Town of Garner*, 139 N.C. App. 269, 273, 533 S.E.2d 525, 528 (2000) (more than one standard of review may be used if required, but the standards are to be applied separately) (citations omitted). We review *de novo* the propriety of respondent's policy and the superior court's reversal.

Respondent argues that the superior court's conclusion is erroneous and relies on *Wimmer v. Lehman*, 705 F.2d 1402 (4th Cir. 1983), to support its argument that petitioner was not denied due process. However, *Wimmer* is distinguishable from this case. In *Wimmer*, the petitioner, a cadet at the Naval Academy, was an adult. Even though the petitioner was required to make his own arguments and cross-examine the

witnesses, he was permitted to have his attorney present at the hearing. In contrast, petitioner in the present case was a high school student, a minor, and was not permitted to have counsel present at the evidentiary hearing before the Hearing Board.

In *Matthews v. Eldridge*, 424 U.S. 319, 335, 47 L. Ed. 2d 18, 33 (1976), the United States Supreme Court set forth three factors to be considered in determining what process is due when an individual is faced with the deprivation of a property interest:

> [F]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

The North Carolina Constitution provides that "[t]he people have a right to the privilege of education . . . ." (Article 1, § 15). The United States Supreme Court has stated that a student facing suspension has a property interest that qualifies for protection under the Due Process Clause of the Fourteenth Amendment. *Goss v. Lopez*, 419 U.S. 565, 576, 42 L. Ed. 2d 725, 735-36 (1975) (citations omitted). "A student's interest in obtaining an education has been given substantive and procedural due process protection." *Warren County Bd. of Educ. v. Wilkinson*, 500 So.2d 455, 459 (Miss. 1986) (citing *Plyler v. Doe*, 457 U.S. 202, 217, 72 L. Ed. 2d 786 (1982); *Bolling v. Sharpe*, 347 U.S. 497, 500, 98 L. Ed. 2d 884 (1954); *Pierce v. Society of Sisters*, 268 U.S. 510, 535, 69 L. Ed. 1070

(1925); *Meyer v. Nebraska*, 262 U.S. 390, 400, 67 L. Ed. 1042 (1923)).

"The student's interest is to avoid unfair or mistaken exclusion from the educational process. . . ." *Goss*, 419 U.S. at 579, 42 L. Ed. 2d at 737. We acknowledge that the State has a substantial interest in maintaining security and order in the schools. "[O]ur schools are vast and complex. Some modicum of discipline and order is essential if the educational function is to be performed. Events calling for discipline are frequent occurrences and sometimes require immediate, effective action. Suspension is considered not only to be a necessary tool to maintain order but a valuable educational device." *Id.* at 580, 42 L. Ed. 2d at 738.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution is applicable to long-term suspensions. *See Pervis v. LaMarque Ind. School Dist.*, 466 F.2d 1054 (5th Cir. 1972) (due process applicable to indefinite suspensions); *Sullivan v. Houston Ind. School Dist.*, 475 F.2d 1071 (5th Cir. 1973) (due process applicable to the addition of a 30-day suspension to a 10-day suspension).

In the present case, petitioner was subjected to a long-term suspension from school, for the remainder of the Fall 1996 semester, based on the reports of other students. The facts and the nature of the conduct were all disputed. For these very same reasons, the Court in *Goss* stated that "[t]he risk of error is not at all trivial, and it should be guarded against if that may be done without prohibitive cost or interference with the educational process." *Goss*, 419 U.S. at 580, 42 L. Ed. 2d at 738. The Hearing Board and respondent's claim that petitioner's conduct constituted harassment turned upon a factual adjudication before the Hearing Board. Respondent concedes that the better practice would be to permit attorney

representation before the Hearing Board. We agree. The protections of due process require that petitioner be apprised of the evidence received and given an opportunity to explain or rebut it. *See Givens v. Poe*, 346 F. Supp. 202, 209 (W.D.N.C. 1972) (where exclusion or suspension for any considerable period of time is a possible consequence of proceedings, modern courts have held that due process requires notice; a full hearing; the right to examine the evidence, the witnesses, and the right to present evidence; and the right to be represented by counsel.)

Under the facts of this case, where respondent sought to impose a long-term suspension and the Board Policy specifically provided for a factual hearing before the Hearing Board, we construe the Due Process Clause of the United States Constitution, applicable to the States through the Fourteenth Amendment, to require that petitioner have the opportunity to have counsel present, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident. *Id.* We hold that respondent's decision for long-term suspension of petitioner was affected by error of law.

V. Remedy

Respondent argues that even if the findings and conclusions of the superior court are upheld, the appropriate remedy was to remand the matter to the Board of Education for further proceedings. We disagree.

N.C.G.S. § 150B-51(b) specifically states that the court reviewing the final decision may reverse the agency's decision "if the substantial rights of the petitioners may have been prejudiced . . . ." N.C. Gen. Stat. § 150B-51(b). This argument is overruled.

VII. Conclusion

We hold that petitioner's substantial rights have been violated. Under the facts of this case petitioner's due process rights were violated. We need not address respondent's remaining assignments of error. We affirm the reversal of respondent's decision by the superior court.

Affirmed.

Judges WYNN and TIMMONS-GOODSON concur.

APPENDIX B

IN THE SUPREME COURT OF NORTH CAROLINA

No. 290PA02

FILED: 28 FEBRUARY 2003

IN THE MATTER OF: NICHOLAS R. ROBERTS and the BUNCOMBE COUNTY BOARD OF EDUCATION

On discretionary review pursuant to N.C.G.S. § 7A-31 and on appeal of right of a constitutional question pursuant to N.C.G.S. § 7A-30(1) to review a unanimous decision of the Court of Appeals, 150 N.C. App. 86, 563 S.E.2d 37 (2002), affirming an amended order entered 29 January 2001 by Judge C. Walter Allen in Superior Court, Buncombe County. Heard in the Supreme Court 5 February 2003.

PER CURIAM.

DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED; APPEAL DISMISSED EX MERO MOTU.

APPENDIX C

RELEVANT EXCERPTS FROM BUNCOMBE COUNTY BOARD OF EDUCATION POLICY # 460, "PROCEDURAL CODE FOR DEALING WITH SERIOUS STUDENT MISCONDUCT

I.. General Provisions

A.. Coverage

1. This code of procedure deals with discipline problems other than the ordinary classroom discipline; it covers only those disciplinary matters serious enough to be dealt with by the principal or his designee. The teacher should make every effort to handle personally the usual problems of maintaining classroom discipline before involving the principal. State Law, G.S. 115C-391, places upon the teachers and principals the responsibility and gives them the authority to maintain good order and discipline in their schools.

Alleged misconduct shall be dealt with by the principal or his designee:

- Whenever a teacher considers a problem of classroom discipline to be so serious as to warrant the principal's attention; or,

- Whenever the alleged misconduct constitutes a violation of the rules that govern serious misconduct; or

- Whenever the principal deems it advisable that he deal personally with the misconduct.

2. Any of the following actions occurring on the school grounds, off of the school grounds at a school activity, function or event, or while waiting for, riding or leaving a school bus shall constitute Serious Misconduct and be subject to the provisions of this policy.

- Intentional disruption of any lawful mission, process or function of the school.

- Intentional damage or destruction of school property.

- Intentional damage or destruction of private property.

- Intentional assault on a school employee.

- Intentional physical abuse of a student or other person not employed by the school.

- Knowing possession of weapons and/or dangerous instruments.

- Knowing possession, use, or transmission of or being under the influence of any controlled substance (as defined under North Carolina General Statute 90-95), alcoholic

beverage or intoxicant of any kind, (excepting medicines accompanied by a physician's order. Reference Policy #545 *Administering Medicines to Students* and Policy #470 *Drug and Alcohol Use*).

- Violations of school rules and other behavior determined by the principal or his designee to impede the mission, process or function of the school.

3. A student who brings a firearm, bomb or powerful explosive device to school, as defined by the Gun-Free Schools Act, shall be subject to suspension for at least one year. The provisions of this policy regarding long-term suspension shall apply.

4. The law, G.S. 115C-112, and procedures regarding children with special needs shall be followed whenever a child with special needs engages in serious student misconduct.

B. Principal's Investigation

The principal shall investigate and hear all available accounts dealing with the misconduct. The student shall be encouraged to raise any defense he thinks relevant. The principal should question, if possible, witnesses suggested by the accused student. If the principal feels that all information is not available, he should postpone disciplinary action for a reasonable time until such evidence is available.

C. Limitations on Principal's Power to Suspend or Request a Hearing

If, upon investigation, the principal decides to take disciplinary action, he must investigate and take action on all alleged misconduct known to him at that time. This action may be up to a ten day suspension.

. . . .

III. Long-Term Suspension and Expulsions

A. Initiating Long-Term Suspensions or Expulsions

1. Decision to seek over ten (10) days suspension or expulsion. If, after his investigation, the principal decides that a penalty over ten (10) days is warranted, he must notify the convener of the Hearing Board and ask that a hearing date be set. The principal must decide to do this and ask for long-term suspension within five (5) days after he learns of the misconduct.

2. Sanction Before Hearing The procedure described in 1. above does not affect the principal's authority to involve a short-term suspension or other sanction after his investigation or he may choose to take no action other than to turn the entire matter over to the Hearing Board.

B. Notice

Whenever the principal seeks a long-term suspension or expulsion, he must give written notice to the student and his parents and the Superintendent no later than the end of the school day following the day of the conclusion of the

principal's investigation of the alleged misconduct. The notice shall contain:

1. The rule allegedly violated and the acts of the student thought to have violated the rule and a summary of the evidence against him; and,

2. Notification that the parents have the right to waive the hearing, in which case the principal shall impose the penalty within the limits of his statutory authority; and,

3. A tentative time and place for the hearing as scheduled by the convener of the Hearing Board; and,

4. A description of the hearing procedures and the available appeals process, or a copy of this policy; and

5. Notification that written statements about the misconduct and the student's disciplinary records are available for those concerned in the hearing; and,

6. Notification that before long-term suspension can be invoked, the student has a right to a hearing, which may be waived if the student and his parents agree to forego the hearing by furnishing the principal a signed statement to that effect. The student and his parents will have twenty four (24) hours after receipt of this notice to decide whether they will waive the hearing. If a statement is not received from the parents, the hearing schedule will be observed. However, in case of serious misconduct, upon the recommendation of the principal, the right to waive may not be exercised by the parents. The Hearing Board will convene and hear the case.

C. Scheduling the Hearing

The hearing should be scheduled at the discretion of the Hearing Board by the end of the fifth day of suspension of the student. The convener of the Hearing Board may schedule a different date if good and sufficient cause is shown by either the student or the principal.

D. Group Hearing

When more than one (1) student is charged with violating the same rule and the facts are basically the same for all students, a single hearing will be conducted for them.

If during the hearing, the convener of the Hearing Board thinks a student's interest will be prejudiced by the group hearing, he may order a separate hearing for that student.

E. Witness Statements

The principal shall make available in his office at least two (2) school days before the hearing the signed statements of all persons on whose information the charge against the student is based. These statements may be examined and copies may be obtained by the student, parents, and representative. If the principal later receives any further information that will be employed at the hearing, he must notify the student of it and make copies available before the hearing. For example, if the student is charged with consistently failing to follow a teacher's direction, the consistent nature of the failures must be specifically described.

Likewise, the student shall file with the principal before the hearing, signed statements of any witnesses who have defensive information the student wishes considered at the

hearing, including his own statement of defense if he chooses to make one. These statements shall set out with some particularity the information known to the persons making them.

F. Availability of the Student's Previous Disciplinary Records

Besides having access to the written statements that form the basis of evidence against the student, his parents shall have access to his disciplinary and academic record.

G. Composition of the Hearing Board

1. Hearing Board Make-up. The Hearing Board will be made up of one faculty member from each school in the high school attendance area involved (administrators are excluded). (Each school will elect/name two teachers to serve in this capacity. The two may alternate appearances on the Hearing Board, or one may serve as a member and one as an alternate). In the absence of a board member or alternate, the convener shall have the authority to appoint a hearing board member for the school in which the absence occurs for the hearing.

2. Convener. The convener shall be the Hearing Board member who represents the involved student's school. The convener has no vote except to break a tie vote.

The convener has all other rights and duties of a Hearing Board member as well as the following specific duties and powers:

(a) He schedules the hearing at a specified date, time, and place. He has the

authority to postpone the date and time or change the place for good cause.

(b) He assures the presence of a full board at the hearing.

(c) He is available before the hearing to answer any question that the student (or his parent or representative) may have about the nature and conduct of the hearing.

(d) He has full charge of the hearing and has authority to direct its proceedings and to control the conduct of all persons present, subject to the general direction of this procedural code. He may limit questioning that is unproductively lengthy or irrelevant.

(e) He writes the Hearing Board's findings and recommendations for action. He may delegate this responsibility to another member of the board.

(f) He transmits the board's written findings and recommendations to the Superintendent and principal immediately after the hearing.

3. Conflict of Roles. Anyone who has had direct contact with the student's alleged misconduct or who will probably give testimony to the Hearing Board should not serve as a member of the Hearing Board.

H. Conducting the Hearing

1. Closed Hearing. The hearing may only be attended by the hearing board members, the Superintendent of Schools, the principal, the student, the parents, and the student's representative. Witnesses shall be present only when they are giving information to the board. The student may be excluded at the discretion of the board with the concurrence of the student's parents (or the student's representative when he acts in the place of the parents) at times when his psychological or emotional problems are being discussed. No one may be present with the board during its deliberations.

2. Student May Remain Silent. The student may speak in his own defense and may be questioned on his testimony, but he may choose not to testify and in such case he shall not be threatened with punishment or later punished for refusal to testify

3. Record of the Hearing. The Hearing Board shall provide for making a record of any information orally presented to it at the hearing. Statements and other written matter presented to the board should be kept on file by the principal.

4. Principal's Submission of Statements and Records. It shall be the duty of the principal to submit to the Hearing Board the signed statements of all persons having information about the student's misconduct. These shall be the same statements that previously have been available to the student in the school office and those statements that the student submitted to the office. He also shall submit a copy of subsections 1. and 2. of the notice given to the students, parents, and Superintendent under Section III. B. Further, upon the request of the board, the principal shall submit to the Hearing Board the student's disciplinary and academic records.

If the principal or the Hearing Board deems it necessary, the information contained in these records shall be explained and interpreted to the board by a person trained in their use and interpretation. All records and statements submitted to the board shall remain confidential.

5. Use of Witnesses. The hearing shall consist of a review of the statements and records submitted by the principal under Section 4. above; but if the principal, the student, or the convener requests that any witness appear in person and answer questions, then that witness will be called.

6. Examination of Witnesses. Members of the Hearing Board, the principal, the student and his parents may question witnesses, (witnesses include the principal and the student) about any matters logically relevant to the charge against the student and the proper disposition of the matter.

7. Role of the Parents. The parents shall be present at the hearing and shall have an opportunity to make a statement to the board of their feelings about the proper disposition of the case and to answer questions. Any statements they make need not be filed with the principal before the hearing. They should be able to advise the student during the hearing. They may also question the witnesses.

Under extreme conditions and at the discretion of the Hearing Board, a different adult may appear instead of the parent(s). Should the parent refuse to appear, the case will be referred to the Superintendent and the Chairman of the Board of Education.

8. Adult Representation in Addition to or in Lieu of Parents. If the parents cannot be present or if the student or his parents think his interests can be protected better by the

presence of another adult in addition to the parents, the student may bring another adult to the hearing. If the parents are present, the non-parent adult may advise the student, but he may not examine witnesses, make any statement, or in any way actively represent the student before the board. If the parents cannot be present, the non-parent adult has all the rights of a parent before the hearing board as provided in Subsection 7. The non-parent adult may not be an attorney.

I.. Compelling the Appearance of Witnesses

If the Hearing Board finds it necessary to have a witness appear before it and the witness refuses after being requested to appear, the Hearing Board may notify the Superintendent and the Chairman of the Board of Education of this case and the Board of Education may issue a subpoena ordering the witness to appear.

J. Disposition of the Case

1. Actions of the Hearing Board. The Hearing Board shall reach its decision on whether the student violated a rule on serious misconduct by a majority vote and report its recommendation to the principal and Superintendent. The decision should be based solely on the evidence presented at the hearing, and should state substantial findings of facts on which the board's decision rests.

When some misconduct is found, even if a rule of serious misconduct has not been violated, the Board's report shall include a recommendation to the Superintendent or the principal concerning what action, if any, should be taken with respect to the student. It may range from no action through the entire scope of counseling attempts and possible penalties including suspension for the remainder of the school year and

expulsion. The recommendation should explain the reasons for the particular action recommended to the Superintendent or the principal.

Dissenting Hearing Board members' views should be noted if the dissenting members so request.

2. Actions of the Superintendent /Principal. If the Superintendent/ Principal follows the recommendation of the Hearing Board, he shall notify the parents of the student of the decision.

If the Superintendent/ Principal directs a sanction other than recommended by the Hearing Board, he shall send to the parents of the student and to the convener an explanation of why he thought the recommended sanction to be inappropriate.

K. Appeal

The student may appeal to the Buncombe County Board of Education a penalty by the Superintendent by giving notice of appeal within five (5) days of receiving the Superintendent's decision. The penalty need not be postponed pending the outcome of the appeal. Such an appeal must be on the record made in the hearing and new evidence will be admitted only to avoid a substantial threat of unfairness.

L. Chronic Offender

If a student has been suspended for several short-term suspensions, the principal may request the Hearing Board to review this student's records.

IV. Definition of Terms

- *Appeal* - A procedure for review of the Hearing Board's decision.

- *Closed Hearing* - A hearing not open to whoever might want to attend but only to the Hearing Board, the Superintendent of Schools, the principal, the student, his parents and his adult representative.

- *Convener* - The chairman of the Hearing Board.

- *Expulsion* - The denial to a student of the right to attend school and to take part in any school activity for an indefinite period of time. Expulsion is the most severe penalty available and should be utilized only in extraordinary situations and in accordance with G.S. 115C-391.

- *G.S.* - General Statutes of North Carolina.

- *Hearing* - The examination of accounts of misconduct and the making of recommendations as to proper disciplinary action by the Hearing Board. A hearing is necessary before any punishment more severe than a ten (10) day suspension may be applied to a student unless the student waives the hearing.

- *Hearing Board* - The group of persons selected to serve for a school year who hears the accounts, testimony and recommendations at the hearing and make a report including a recommendation for action to the Superintendent.

- *Long-Term Suspension* - The denial to a student of the right to attend school and to take part in any school

function for a period of time in excess of ten (10) school days, but not exceeding the time remaining in the school year.

- *Notice* - The written statement the principal must give to the student and his parents whenever he seeks a long-term suspension.

- *Parents* - The student's parents or his legal guardian.

- *Principal* - The school employee bearing that title or a school administrator designated by him to carry out any or all of the functions assigned to the principal in this code.

- *Principal's Investigation* - The inquiry made by the principal upon hearing of the misconduct, to determine the student's culpability, and to decide on the proper disciplinary action.

- *Representative* - An adult serving in place of or in addition to the parents to advise or otherwise assist the student before the Hearing Board.

- *Serious Student Misconduct* - The misconduct described in this policy, as well as other student misconduct of a serious nature.

- *Short-Term Suspension* - The denial to a student the right to attend school or to take part in any school function for any period of time up to ten (10) school days.

- *Summary Suspension* - A principal's order under his authority in Number 1 of Section B that a student immediately leave the school grounds.

- *Witness* - Any person giving information to the Hearing Board at a hearing.